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TOM LYTHGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS  
COUNTY OF JEFFERSON, STATE OF MONTANA  
October 31, 2006**

**Present:** Commissioners Lythgoe, Notbohm and Weber; Harold Stepper and Mike Hoffman, County Planners; Bonnie Ramey, Clerk and Recorder; Megan Bullock, County Sanitarian; Garry Pace, County Superintendent of Schools; Wayne and Barbara Weyer, Gene and Martha Hanson, Rod Sager, Rick Strauss, Sabrina Steketee, Bob Klein, Mike Molitor, Celia Wolny, Connie Grenz, Robert and Alice Bowman, Lori Benner, Michelle LeTexier, Dustin Fraker, Keith Barrett, Jenny Scott, Melissa Tummler, James McCauley

**MINUTES**

Commissioner Weber moved to approve the minutes of September 12. Commissioner Lythgoe seconded. The motion carried.

**REPORTS**

**CANDIDATE FORUM**

Commissioner Lythgoe reported that he attended the candidates forum in Montana City on the 24<sup>th</sup>. There were over 40 in attendance, which is approximately half of those that attended the Boulder forum.

**ANNEXATION**

Commissioner Lythgoe reported that the Commissioners met with the City of Helena on the 25<sup>th</sup> regarding annexation and the proposed City-County Planning Board. The meeting was attended by the city commissioners, the planning staff, the city attorney, and the city manager. They had a pretty open discussion of what Jefferson County wants to see. Last night, the city commission met and considered the second reading of the ordinance to form a City Planning Board for the purpose of planning activities in Jefferson County as they relate to the City of Helena. There was a unanimous vote to form the board. There has been no notification to Jefferson County of the makeup of this board.

**BIG BOULDER APARTMENTS**

Commissioner Lythgoe reported that he attended a meeting with Gene Leuwer of RMDC, Jeff Miller and Mike Dubois to discuss the Big Boulder Housing Project. Commissioner Notbohm stated that he called for the meeting and Tara put it together. The meeting was to make everyone

aware of what RMDC does, their involvement, etc. Commissioner Lythgoe stated that RMDC has been pursuing funding from HUD to renovate the Big Boulder Apartments. They have decided to abandon this option, and will build new apartments and raze the old ones. Commissioner Notbohm stated that the reason to do this is that it is cheaper to build new apartments than to refurbish the old. Commissioner Lythgoe stated that the existing apartments were modular buildings brought in and they are not the best construction.

### **ZONING COMMISSION**

Commissioner Weber reported that the zoning commission decided to wait and see the outcome of the meeting with the City of Helena before they decided what direction to take.

### **CALENDAR REVIEW**

11/01 Meeting with Tammy Johnson - 10:00  
11/02 Whitehall Chamber - noon  
Solid Waste Board - 6:00  
Health Board - 6:30  
11/07 Election day - most County offices closed

### **ELECTED OFFICIAL/DEPARTMENT HEAD CONCERNS**

Commissioner Weber stated that this is the end of the comment period for the OT Mine. He has drafted a proposed comment for the Commission. The mine was granted permission for exploration in 2007 and received some protests so the permit was pulled and they are having another comment period. The protest concerned wildlife, which is why he addressed it in the commission's comments. Commissioner Lythgoe asked if he mentioned road closures. Commissioner Weber asked if this really has anything to do with OT. Commissioner Lythgoe stated that he feels that it is appropriate to add that to this correspondence. Commissioner Notbohm noted that it is critical to add. Commissioner Weber stated that he will send the e-mail.

Bonnie Ramey, Clerk and Recorder, presented the official annual report for fiscal year 2005 - 2006. Commissioner Weber moved to accept the annual financial report. Commissioner Notbohm seconded. The motion carried.

### **CORRESPONDENCE**

Commissioner Lythgoe stated that they had made reference to a petition with 1200 signatures regarding Jefferson County's actions regarding the Forest Service. Jim McCauley has a copy of the petition, which read:

“We the undersigned petition the Jefferson County Commissioners to  
immediately adopt a resolution stating: “all roads in the County of Jefferson now

traveled or used by the public or which have been traveled or used by the public since 1886 are hereby declared to be County public highways.”

Jim McCauley stated that regarding the resolution this petition requested the commission to adopt, this was prompted by the first round of closures by the Forest Service. He wrote specific language to address federal law and state prescriptive easements. RS-2477, established in 1886, talked regarding highways. This is a self executing law, the only one in existence that he knows of. If a road was in existence, on a map, it was a public highway. This includes a trail, road, or wagon track. The purpose of that was to protect the public’s right to access public lands, which were usually behind private land. The government did not want these public lands landlocked. State law mimics federal law and was applied from 1886 through 1976. It was then looked at to see if it was practical and RS 2477 was reaffirmed for those roads existing at that point in time. New roads after that time are not covered.

His opinion is that there are only two ways to close roads; through the court with a quiet title or with the petition to the Commission. To his knowledge, the Forest Service has never done either. The petition that he put forth in 2000 was not a legal petition, it was only to show public support to the Commission. Every citizen has private property rights in these public properties. Jim stated that it is his suggestion that the Commission get legal counsel that understands RS-2477 and adopt a resolution. They could then go back and adopt individual roads. In 1985 when he became a Commissioner, this was one of his main concerns, which subsequent Commissioners continued with the process. The Commission needs to proceed with this or we will lose these roads. They need to take those rights-of-way that obviously belong to the County and claim them. Commissioner Lythgoe stated that they need to be careful what kind of claim they make. Jim stated that there are public rights-of-way that can be proven that they can claim jurisdiction over. Lots of work has been done already in there is a very logical process to follow. Commissioner Notbohm stated that his point has always been that they need a resolution to buy us time to do the process. Commissioner Lythgoe stated that this is why the wording is so important. They can’t just all roads on Forest Service land public rights-of-way. Jim stated that they need to hire someone who understands all of this. Commissioner Notbohm stated that they need to claim the roads to buy us time, even though they may not all be ours.

Jim went on to say that in August of 2002 he delivered a letter to the Commission requesting the adoption of two roads, Dunn Canyon and Fitz Creek, in Jefferson County. A follow-up letter was sent in April 2002 asking the Commission to again look at the issue. All of the information is available in a computer file, which is unlike anything in the state. He has also included a letter from Val Wilson who was then Jefferson County Attorney and supporting documents.

Jim said the previous Thursday he was hunting and ran into someone doing research for the Forest Service. He asked them why the Forest Service proposes to close some of these roads in their travel plan noting that they are the only access for game retrieval.

Jim had one final item to bring before the Commission. Is stated that the Little Boulder drainage is a county road to the section line. The Forest Service has had a non-motorized sign up since 1997. This is an illegal closure. This was done while they did some work on the riparian area, which was supposed to be a 6-month project. The problem is that someone may go up there with

an ATV to get game, and people with cattle see the sign and the person on the ATV and there is a confrontation.

Commissioner Lythgoe stated that they can't make a decision on any of this at this meeting; it will need to be on an agenda. He asked that Jim list all roads that he has concerns with in a letter and the Commission will deal with them.

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A payment agreement with Montana Tunnels outlining payment details for taxes was presented for signature and signed.

## **SUBDIVISION REVIEW**

### **REQUEST FOR VARIANCE - TRAVIS CREEK MINOR SUBDIVISION**

Mike Hoffman, County Planner, presented a request for variance for one point of ingress/egress. He recommended the variance be granted. Commissioner Lythgoe if the road will access both lots and will meet County road standards. Mike stated that it would. Commissioner Weber questioned the temporary cul-de-sac. He asked what its purpose is. He also asked about access across the Forest Service property and if the developer would like the County's help on this. Mike answered that there may be further development on Lot 1. As for the access issue, Dennis Lay will be working with the Forest Service himself.

Commissioner Notbohm noted that Lot 2 is 1.28 acres and asked if there will be plenty of usable land for building site, septic system, etc. Mike stated that he believes this is so. Commissioner Weber stated that he is also concerned with the underground utility easement under the intermittent streambed. Mike stated that he doesn't know the particular reason for this; there may be some DEQ permitting involved.

Commissioner Lythgoe moved to grant the variance. Commissioner Notbohm seconded for discussion. He asked Mike if he has viewed subdivision. Mike answered that he has. Commissioner Notbohm questioned if he is comfortable with this plan. Mike stated that it will be a challenge getting access across the Forest Service, but he is comfortable with the grades of the roads. Commissioner Weber stated that he is hesitant to grant this variance, only because there are so many variables to go with. The one point of ingress-egress is minor; he would like more information, noting that a variance is still an option at preliminary plat approval.

Commissioner Lythgoe noted that they will have to list the requirement of the variance in the preliminary plat approval documents. He noted that it is not the County's responsibilities to get the access from the Forest Service, the Commission just needs to okay the one point of ingress-egress. It is up to the developer to proceed from there. Commissioner Notbohm stated that his problem is with the future of this piece of land; he would like to view it before he gives an answer.

The motion failed unanimously. Commissioner Lythgoe stated that Dennis needs to come and explain the subdivision to the Commission, or the Commission needs to go look at the ground.

### PRELIMINARY PLAT APPROVAL - VALLEY MEADOWS MAJOR SUBDIVISION

Mike Hoffman, County Planner, presented his staff report for this 15 lot major subdivision with lots ranging in size from 1.10 to 1.82 acres. Parkland dedication is required for the subdivision and the developer has chosen cash in lieu of payment. The developer will provide a 20,000 gallon water storage tank, a well for filling, a dry hydrant and an easement. Mike presented a letter from the developer regarding the fire mitigation measures that will be taken. He then recommended that preliminary plat approval be granted. Commissioner Lythgoe asked if there is a need for bonding or letter of credit to make sure that this happens. Mike stated that there is the option for a subdivision improvement agreement between the preliminary plat and final plat approvals. Harold stated that at this point, the developer has a condition of approval to meet for final plat approval. If he can't meet the requirement in the specified time frame, there is the option to do a subdivision improvement agreement. Commissioner Weber noted that the length of Lot 15 versus the width appears to be beyond the three to one ratio. Harold stated that the lot dimensions are within limits.

Commissioner Lythgoe asked Rick Strauss if the fire department is comfortable with the fire plan. Rick answered that the department agrees with the plan. Commissioner Lythgoe suggested that they talk to the fire department on the North end who have a lot of experience with subdivisions. He asked if it is better to pump out the water versus a draw out. Rick stated that the fire department is looking at a pump system.

Commissioner Notbohm stated that the lots seem a little small for a drainfield and room for a backup system. It was noted that the design has been approved by the DEQ.

Mike read a letter in opposition of the subdivision from Gene and Martha Hanson that has 28 signatures. Mike noted that he also has a letter from an attorney representing the Hansons.

Gene Hanson stated that there is no test well on the property. The wells in the plan used to verify water are one-half to three-quarter miles away. He stated that he is in opposition to this; if you want that many homes in a space that small, go to town. Gene said that the County got the plans for this the beginning of July, he didn't get notice until September. Commissioner Notbohm asked what the Hanson's well pumps now. Gene stated that they get 25-30 gallons a minute.

Wayne Weyer stated that this subdivision is adjacent to his property. He has the same concerns as Mr. Hanson with the wells. He noted that all of the septic systems will be on his property line. Currently, his well produces 10 gallons per minute. Wayne pointed out that Fish Creek seems to be the dividing line for water availability. There is an existing well on the property, and the reason the property was sold is that the well was dry. He stated that his house is on 20 acres, and it will run his well dry to water the lawn. He asked what 20 homes will do to the water table. He is strongly opposed to this subdivision. However, he doesn't think that he would oppose a small subdivision. He stated that he and his family moved out there because they didn't want neighbors breathing down their necks; people move to Montana because they want to look out of the window and not see a bunch of houses.

Robert Bowman stated that at the Planning Board meeting, the board moved to deny. There was no mention of a fire plan. Now, they get notice that there is a fire plan and the Planning Board has changed its mind. It was his understanding that if a subdivision was denied the developer has to wait a year to resubmit.

Keith Barrett stated that he agrees with the others for the same reasons. He asked how much water would be needed if there was a fire and a couple of these houses went up.

Mike stated that the Planning Department receives applications in their office, and they are required by state statute to give adjacent landowners notice two weeks prior to the hearing. The Planning Board makes a recommendation only; it is up to the Commission to approve or deny a subdivision. If the Commission denies a subdivision, the developer has to wait a year to resubmit an application.

Commissioner Lythgoe asked what the Planning Board recommended. Mike stated that the Planning Department recommended denial to the Planning Board because of fire mitigation concerns. The Planning Board recommended denial as proposed. Commissioner Lythgoe noted that this did not go before the Planning Board again, but the Planning Department is now recommending approval because of the new fire plan.

Megan Bullock, County Sanitarian, stated that the minimum requirements are one acre for a septic system. The rapid perc test is addressed by the proposed septic systems. The water samples were gathered within a one-mile radius, and tested for nitrates. The DEQ state statute requires 8 gallons-per-minute, per home.

Robert stated that at the Planning Board meeting, they were told that if the subdivision was denied that night, the developer would have to wait one year to resubmit. Harold stated that the Planning Board is strictly a recommendation; if the Commission denies a subdivision it starts the one-year period. Robert stated that it wasn't explained that way at the meeting.

Commissioner Notbohm stated that he understands the concerns with water. The Commission is told that we can't deny a subdivision based on water, as we aren't engineers. However, what recourse do people have if the wells go dry after the subdivision goes in; there is none. Commissioner Lythgoe stated that this is correct, there is no recourse. But the DEQ makes this recommendation based on science. If the developer obeys the law and follows the subdivision regulations and the DEQ gives their approval, whether we agree or not, we can't deny based on density. He stated that this would get the Commissioner sued. If the developer follows the law, the Commission cannot deny the subdivision. In this case, he cannot see that the developer is not following the spirit and letter of the law.

Harold noted that one recourse would be to go to the water court. Commissioner Notbohm noted that the development in the Helena valley was done with DEQ approval and they are a mess; he doesn't trust this. Megan noted that cumulative effects are now figured, though they weren't in the past.

Commissioner Weber asked if the developer is currently taking buy-sell agreements. Dustin Fraker stated that their realtor has advertised, but there are no buy-sell agreements. Commissioner Weber stated that buy-sells aren't allowed until after preliminary plat approval, but they have to be filed with the Clerk and Recorder and the money cannot be used. Dustin stated that according to his realtor, he will advertise, but advise people that the lots cannot be purchased at this time.

Celia Wolny asked if any of this could be addressed by zoning laws. Harold stated that it could, but to start something at this point will have no effect on this subdivision. However, there are more to come and he would suggest that the residents consider zoning. The Commission can't deny a subdivision based on density, but zoning can address this. He would strongly urge the residents to look at zoning.

Commissioner Weber asked if they have adequately addressed people's concerns regarding advertising parcels at this time. Harold stated that the developer can advertise, as long as no buy-sell agreements are in hand before preliminary plat approval.

Gene Hanson asked if this is the last opportunity to comment on this subdivision. Commissioner Lythgoe stated that this is just the preliminary plat; the developer will have to come back before the Commission for final plat approval.

Commissioner Weber stated that to address some concerns, they are trying to get to the point to be able to do some water studies, but it would take a lot of money. They are working towards this, but the Commission can't make more stringent requirements than the DEQ.

Commissioner Weber moved to grant preliminary plat approval. Commissioner Lythgoe seconded. Commissioner Notbohm stated that he has a subdivision across the street from him, and he had the same concerns with water. He wrote to the DEQ, and they required a central system. He feels there are grounds for a review from the DEQ. The motion carried, with Commissioners Lythgoe and Weber voting aye and Commissioner Notbohm voting nay.

## **ITEMS FOR COMMISSIONERS ACTION OR REVIEW**

### **LORI BENNER - DISCUSS GRANT WRITING SERVICES**

Lori Benner, Nittany Grantworks, stated that she met with Commissioner Weber at the MACo conference. Lori stated that she is an independent contractor that specializes in grant writing and administration with specific emphasis on local government and community development. She has worked for a County Commission in Maryland on infrastructure concerns. She said that she picked up the local paper and sees that the county is working on affordable housing. She stated that she is currently doing similar work in Park County. She asked that if there are issues the Commission wants to consider they should make a list for her, noting that grant funding is a viable source of income. Commissioner Lythgoe asked if she has a résumé that she could leave; Commissioner Notbohm also asked that she present her fees. Lori stated that she will put

something together and put it in the mail.

#### DISCUSS AND DECIDE ON ALLOCATION OF METAL MINES MONIES

Commissioner Lythgoe stated that they will only be discussing this item at this time because of additional information received and research done by Sabrina Steketee. The Commission was under the impression that only two school districts were affected, Clancy Elementary and Jefferson High School. This may or may not be true. They need to come up with a formula, a manner in which to determine how schools have been affected by the closure of the mine. There are policies in place that if followed by the mine, would have helped us. Because this is not available, we need to come up with a way to equitably distribute the monies. He did speak with all schools in the district; Montana City feels that they have had no impact and the High School would like to remain as is, as stated in their letter.

Commissioner Weber stated that he received a phone message from Barb Reiter who was not able to attend the meeting today. It is her contention that Boulder and Basin Elementary schools have been affected and would recommend that 10% of the monies go to Boulder, and 5% go to Basin. Commissioner Lythgoe stated that no decision will be made today; this needs to be discussed over several meetings.

Bob Klein stated that Boulder Elementary has finished their assessments and has a letter to present. Sabrina read the letter (on file in the Clerk and Recorder's office). The letter outlined three requests:

- 1) to include Boulder Elementary in the distribution of the Metal Mines Trust Fund
- 2) to include Boulder Elementary in future annual disbursement of the Metal Mines License Tax funds
- 3) to consider mitigating the impact of the omission of Boulder Elementary from the annual license tax distributions in the past by making a contribution from the county portion of the Metal Mines Trust fund disbursement

Michele LeTexier, Basin Elementary, also presented a letter as well as a resolution from 1990 that states that Basin is also an affected school.

Commissioner Notbohm stated that there is quite a bit of information regarding what is being requested. He feels they need to think about this and absorb it for awhile. He feels that Boulder and Basin probably deserve a share, although he is not sure about County Metal Mines funds being used to make up for past loss.

Commissioner Weber stated that the Commission has also gotten a request from Mary Ellen Earnhardt to fund the 21<sup>st</sup>-century program. Sabrina stated that this is an incredible program. Bob Klein noted that her letter is also in support of the Elementary School's request and noted that they have one year of funding remaining.

Commissioner Lythgoe said that he thinks that something they thought was very simple has become quite convoluted, and righteously so. The Commission needs to meet with all school



boards or representatives thereof and they also need to pull Bonnie in on the meeting. If Carol Ferguson is still in town he's going to try to involve her also.

Mike Molitor stated that they are not out to point fingers at who tuned or didn't do something; there were five superintendents, school boards, etc. involved also. They just want to move forward. Commissioner Lythgoe stated that he understands this, but he has a bit of a problem with them wanting this Commission to pay back for a mistake of the past Commission. Sabrina stated that this was not even their thought until they did some research. The amount the Clancy has gotten is almost half \$1 million. If Boulder had gotten even half of the amount it would've been extremely helpful. Currently, the trustees are looking at not being able to purchase reading curriculum.

Commissioner Lythgoe stated that he feels it is appropriate for the Commission to meet with representatives from each board.

Jim McCauley stated that he was a Commissioner in 1985, and one of the Commissioners who did the original resolution. He was also on the metal mines board beginning in 1987. He stated that the metal mines license tax monies were set up and controlled by the State of Montana at that time. The affected districts were studied on impacts of ingress, and he cautioned those in attendance to be careful in stating that things were not done properly. At that time the State took the money to hold it in trust for the County, with the State taking the interest. They went to the State and said that since the money belongs to the school districts and the County, we wanted to deposit the money in the County coffers. The interest was greater than the principal. After the money was received, the County took action to deposit the money based on bids and increased the amount of interest by 1.5 percent. The schools then came to the County and stated that this was their money and they wanted control of it. The money had to go to the affected schools, Clancy Elementary and the High School. Over the years there have been questions over how the money has been spent. Sabrina stated that she doubts that Boulder was thought to be impacted at the time the resolution was done. However, in a 2000 letter from Carole Ferguson regarding affected schools, there was no indication that "affected" equaled negative. She has said that effect can include districts that are growing, as well as declining. The only reason they are saying that something was done wrong is with the benefit of hindsight. The information from Carole Ferguson came a full ten years later. Jim stated that at that time, 1990, all increases were looked as decreases. At this time, he feels that they are on the right track; Boulder is affected, and probably Basin too.

Mike Molitor stated that he has been on the high school board for eight or nine years, and they have called the metal mines on the Mike Molitor fund because he wouldn't let them spend any of the money, but rather save it for the future when the mine closes. Clancy Elementary and Jefferson High got a double positive impact - the license tax and A&B monies. Boulder Elementary was also impacted, but had to deal with the increases with only the A&B money.

Bob Klein stated, on behalf of Clancy, he has been there since 1990. The analysis of the Clancy enrollment at that time was that 35 children had parents who worked at the mine, but 21 of these were already in the school before the mine opened. There was in fact growth, but it really can't be tied to the mine. The board has been very frugal with the monies received, and if any money

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has been spent it was interest earnings. He doesn't feel that the Commission will have a problem with Clancy if the money is divided.

Commissioner Lythgoe stated that he appreciated Jim McCauley attending the meeting. They are not here saying that anyone made mistakes. What he has learned this past week has confused him more than anything. Montana state statute language has both "may" and "shall". "Shall" denotes that they have to release the school funds, but "may" release the county funds. The Commission is in no hurry to make these decisions.

Sabrina stated that she talked Jim into coming to the meeting. The figures in the letter were taken from the resolution. When it comes time to decide the impacts, they need to remember that impact doesn't necessarily mean big. Jim stated that the amount of money Jefferson County got in proportion to the impact is huge. Commissioner Notbohm stated that there are only three counties statewide that receive these monies. Mike stated that he appreciates that the Commission is taking their time to do this correctly.

Garry Pace, County Superintendent of Schools, stated that the last distribution with Whitehall was similar. Whitehall Elementary didn't receive money because the mine was in the Cardwell school district. However, Whitehall elementary was affected, so the Commission decided to do an equitable distribution.

Bob stated that he would like to have school boards discuss this and appoint a person to sit on the committee.

Commissioner Lythgoe thanked everyone for their participation and stated that he was grateful to Sabrina for her research and Jim for the history he provided.

#### CANCEL MEETING OF NOVEMBER 7

The meeting of November 7 will be canceled due to election Day.

Commissioner Weber moved to adjourn. Commissioner Lythgoe seconded.

#### **MEETING ADJOURNED**

#### **ATTEST:**

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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**CHUCK NOTBOHM, COMMISSIONER**

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**KEN WEBER, COMMISSIONER**